

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11237 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No
2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

LT SHARMA

Versus

STATE OF GUJARAT

Appearance:

MR. ANAND L. SHARMA FOR MR JJ YAJNIK for Petitioner
MR. MUKESH PATEL, AGP for Respondent No. 1

CORAM : MR.JUSTICE S.D.SHAH

Date of decision: 26/12/96

ORAL JUDGEMENT

1. By this petition under Article 226 of the Constitution of India the petitioner has prayed for appropriate writ to direct the respondents to grant to the petitioner Special Pay/Deputation Allowance as has

been given vide Government Resolution dated 21.12.1991 from the date the petitioner resumed duty in the Office of Justice I.C. Bhatt Commission of Inquiry and to pay interest at 18% on the said amount.

2. The case of the petitioner is that he is entitled to Special Pay/Deputation Allowance which has been granted to employees sent on deputation to other various Commissions such as Justice R.C. Mankad Commission, Office of Lokayukta, Gandhinagar, Office of Consumer Disputes Reconciliation Commission, Ahmedabad, etc. Since equivalent treatment is not meted out to the petitioner as is granted to other employees, he has prayed for the implementation of right of equality guaranteed under Articles 14 and 16 of the Constitution of India and has claimed that he should be equally treated in the matter of employment.

3. In order to appreciate the contention of the petitioner, it would be just and proper to set out the facts briefly hereunder:

(i) The State of Gujarat appointed a Commission of Inquiry to inquire into the works of Narmada Development Department and other works in the Water Resources Department, vide its Notification dated 11th September, 1989. The Government thereupon requested the High Court to place the service of the petitioner and other staff members of the High Court at the disposal of the said Commission, vide Communications dated 16th February, 1990 and 12th March, 1990. The petitioner was accordingly sent on deputation at the disposal of the said Commission vide Order dated 15th March, 1990 and he resumed his duties w.e.f. 17th March, 1990 as Private Secretary to the Hon'ble Commission.

(ii) Other identical Commissions were appointed by the State of Gujarat being Hon'ble Justice R.C. Mankad, popularly known as "Mankad Commission". He has also referred to the Staff Members of the Lokayukta, Gandhinagar and Staff Members of the Office of the Consumer Disputes Reconciliation Commission, Ahmedabad, where the staff is being paid Special Pay/Deputation Allowance at the rate of at least 10 per cent of the basic pay while the same is denied to the petitioner and hence he has filed the present petition.

(iii) The State of Gujarat has appeared in response to the Rule nisi issued by this Court and has filed affidavit-in-reply of one N.K. Pursnani, Under Secretary to Government, Narmada and Water Resources Department, Gandhinagar. Affidavit in - rejoinder is filed to such affidavit-in-reply. The State of Gujarat has resisted the claim of the petitioner by mainly contending that the petitioner is not entitled to any relief under the principle of "Equal Pay for Equal Work" as it is not pointed out that the duties which the petitioner had performed were equal to the duties of other Staff of Commissions and that he was not therefore similarly situated. The nature of his duties, the nature of work, responsibilities and other service conditions may be different from the staff assigned to other Commissions and, therefore, he was not entitled to Special Pay/Deputation Allowance which was being granted to staff of other Commissions. It is the further case of the State in its affidavit-in-reply that the Government has stopped the payment of Special Pay/Deputation Allowance by Resolution dated 10th June, 1987 and has decided to grant Special Pay only to certain specified posts by Resolution dated 9th June, 1987. It is submitted that in view of the said Resolution, the petitioner is not entitled to Special Pay/Deputation Allowance. It is their further case that though the petitioner was appointed on deputation to I.C. Bhatt Commission at the recommendation of the Commission, the State of Gujarat did not think it fit to sanction 10 per cent Deputation Allowance/Special Pay to the staff of I.C. Bhatt Commission vide its Order dated 6th March, 1991. It is further submitted that it is not obligatory upon the Government to pay Special Pay/Deputation Allowance as the same has been discontinued or cancelled by the Gujarat Civil Services (Revision of Pay) Rules, 1987 and therefore the petitioner was not entitled to compare himself with staff of other two Commissions.

(iv) Vide Annexure-E dated 27th December, 1991, the petitioner was granted lumpsum amount but was not equally treated by granting him Special Pay/Deputation Allowance as was being done in the case of staff of other Commissions. The request of the petitioner made in this behalf was

rejected by the Government in 1994 and 1996 and hence the present petition is filed by the petitioner for equal treatment under Articles 14 and 16 of the Constitution of India.

4. From the averments made in the memo of Special Civil Application as well as in the affidavit-in-reply and the oral submissions made at the Bar, the only question which this Court is called upon to decide is as to whether staff members appointed on the various Commissions which are headed by the Retired or Sitting Judges of the High Court of Gujarat, are entitled to Special Pay/Deputation Allowance at the rate of 10 per cent or the Government has discretion in the matter to grant such benefit to staff of one Commission and to deny the same to staff of another Commission by taking into consideration the nature of duties and responsibilities performed by the staff of the Commission. How nature of duties and responsibilities to be performed by the staff of specially appointed Commission, whether headed by retired or sitting High Court Judges, is undoubtedly a matter of decision of the Government. But, Government cannot be permitted to act arbitrarily or discriminatorily in providing Special Pay/Deputation Allowance to the staff of one Commission while not granting the same to the staff of other Commission, though the staff is in every respect similarly situated. In the affidavit-in-reply which is filed by the State Government, it is nowhere stated that the nature of duties and responsibilities to be performed by the staff of I.C. Bhatt Commission was different from the nature of duties and responsibilities of any other Commissions. Further it is their case in para 6 of the affidavit-in-reply that the amount of Special Pay/Deputation Allowance depends upon the nature of work entrusted to the staff of the Commission and if the nature of work differs or is distinct, the same could be denied to differently situated staff. The aim and object of constituting the Commission of Lokayukta, Consumer Disputes Reconciliation Commission and Mankad Commission were quite different than the aim and object of the I.C. Bhatt Commission of Inquiry and, therefore,, Special Pay/Deputation Allowance could not be claimed by the petitioner as a matter of right. It is also the case of the State that the staff of Lokayukta, Consumer Disputes Reconciliation Commission and the Mankad Commission has not been sanctioned Deputation Allowance but has been sanctioned a lumpsum Special Pay for their deputed staff considering the activities and the nature of work which they were required to perform in the Commission.

5. From the aforesaid stand taken by the State Government in the Affidavit-in-reply, this Court shall have to satisfy itself as to whether a case for "equal treatment" under Articles 14 and 16 of the Constitution of India is made out by the petitioner or not.

6. The concept of "Equal Pay for Equal Work" is now well recognised by the Apex Court under Articles 14 and 16 of the Constitution of India and where nothing is mentioned in the Order of Appointment about the nature of duties or responsibilities, it would be for the party to establish that nature of duties and responsibilities were similar to the nature of duties and responsibilities of other Commissions. The fact remains that the petitioner was sent on deputation to Commission headed by a retired High Court Judge. How his duties and responsibilities were different from the duties and responsibilities of the staff of other identically situated Commissions is not established before this Court except stating that such duties and responsibilities are required to be taken into consideration. In fact, the I.C. Bhatt Commission was a Commission of Inquiry for which the staff was required and which was appointed from amongst persons working in the High Court of Gujarat, petitioner being one of them. In the order of his appointment, nowhere stated that he shall carry pay and allowances and shall be entitled to such pay and allowances only that are equal to and comparable with the duties performed by the petitioner equal to and comparable with the staff of other Commissions. The order of his appointment on deputation is silent about this. Secondly, the petitioner has positively and categorically stated in the memo of Special Civil Application that right of equal payment is being denied to him by denying him Special Pay/Deputation Allowance which is/was being granted to the staff of other Commission. From the copy of the order of deputation or appointment of the petitioner as member of the Staff of I.C. Bhatt Commission, nothing is clear as to what and how nature duties and responsibilities to be performed by him nor is it made it clear to the Court as to what the nature of duties and responsibilities to be performed by various other Commissions referred to hereinabove were different from the nature of duties and responsibilities of the staff of I.C. Bhatt Commission. In fact, the stand which is taken in the affidavit-in-reply is not based on any factual data nor any material is placed before this Court to satisfy the court that the nature of duties and responsibilities performed by the petitioner were different from the nature of duties and

responsibilities being performed by the staff of R.C. Mankand, Lakayukta Commissioner or Consumer Disputes Reconciliation Commission, Ahmedabad. Once, it is established that the staff is sent on deputation to a Commission which is established under the Commission of Inquiry Act, denial of Special Pay/Deputation Allowance to one and discrimination of the other is violative of Articles 14 and 16 of the Constitution of India and the State cannot be permitted to contend subsequently in reply that the nature of duties and responsibilities performed by the Staff of one Commission were different from the nature of duties and responsibilities performed by the staff of other Commission. Such a bald statement cannot stand judicial scrutiny especially when no such reference is to be found in the order of deputation nor has the State of Gujarat in any of its reply to the petitioner positively stated that the case of the petitioner was different from the case of other staff because the duties to be performed by the petitioner were different from the duties to be performed by the staff of the other Commission. The case which is pleaded in the affidavit in reply has no legs or foundation to stand but is a mere bald assertion unsupported by any material. Once it is established that staff is appointed for a Commission and such staff is one which is appointed on deputation from various other services, the question is as to whether the staff of one Commission which is appointed on deputation can be differently or discriminatorily treated in the matter of payment of Special Pay/Deputation Allowance. The State which is bound by the underlying principles of Article 16 of the Constitution of India to give equal treatment to all persons, cannot be permitted to agitate for the first time in affidavit-in-reply that the nature of duties and responsibilities to be performed by the staff of I.C. Bhatt Commission were different from the nature of duties and responsibilities to be performed by R.C. Mankad Commission, Lokayukta of Consumer Disputes Reconciliation Commission. It is also not pointed out to this Court as to how the nature of duties and responsibilities of the petitioner were different from the nature of duties and responsibilities to be performed by the staff of other Commission. A mere bald assertion therefore cannot help the State Government. If the nature of duties and responsibilities to be performed by the petitioner were actually different, the State could have very well shown that the nature of duties and responsibilities of the petitioner were different from the nature of duties and responsibilities to be performed by the staff of other Commission. In fact, such a positive case is not established at all. Except bald assertion unsupported by

any material, nothing is found on the record from which it could be said that the nature of duties and responsibilities to be performed by the petitioner were in any way different from the nature of duties and responsibilities to be performed by the staff of other Commission. The denial of equal treatment guaranteed under Article 16 of the Constitution of India is baseless and without foundation and the petitioner is entitled to enforce his right of equal pay guaranteed under Article 16 of the Constitution of India. He has in fact, averred that he ought to have been paid the Special Pay/Deputation Allowance as was being done consistently by the State Government with respect to all Commissions appointed by it. This was sufficient for the petitioner to plead and in absence of any material produced before this Court to establish as to how the nature of duties and responsibilities of the petitioner were different from the nature of duties of the staff of other Commissions, the State cannot succeed in the present petition and cannot deny the equal treatment to the petitioner.

7. In view of the aforesaid the action of the respondent in not granting Special Pay/Deputation Allowance to the petitioner as was being granted to the staff of other similarly situated Commission is required to be declared unconstitutional and violative of Article 16 of the Constitution of India and respondents are required to be directed to pay the Special Pay/Deputation Allowance which was paid to the staff of R.C. Mankad Commission, Lokayukta and Consumer Disputes Reconciliation Commission.

8. The petition must therefore succeed. The respondents are directed to pay to the petitioner Special Pay/Deputation Allowance as was being paid to the staff of other Commissions forthwith and preferably within four weeks from today failing which the respondents shall pay the interest at the rate of 18 per cent per annum from the date the said amount was due and payable to the petitioner i.e. the date on which Special Pay/Deputation Allowance was denied to the petition.

9. In the result, the petition succeeds.
Rule is made absolute. There shall be no order as to costs.
